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DEPARTMENT OF STATE

22 CFR Parts 120, 121, 122, 124, 126 and 127

[Public Notice: 9757]

RIN 1400-AE05

Amendment to the International Traffic in Arms Regulations:

Corrections and Clarifications

AGENCY: Department of State.

ACTION: Final rule; request for comments.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to clarify recent revisions made pursuant to the President's Export Control Reform (ECR) initiative. This rule clarifies the scope of disclosure of information submitted to the Directorate of Defense Trade Controls (DDTC), clarifies the policies and procedures regarding statutory debarments, and corrects administrative and typographical errors.

DATES: This Final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The Department will accept comments on the Final regulation up to [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested parties may submit comments within 30 days of the date of publication by one of the following methods:

- E-mail: *DDTCResponseTeam@state.gov* with the subject line, “ITAR Corrections and Clarifications.”
- Internet: You may view this Final rule and submit your comments by visiting the Regulations.gov website at *www.regulations.gov*, and searching for docket number DOS-2016-0070.

Comments received after that date will be considered if feasible, but consideration cannot be assured. All comments (including any personally identifying information or information for which a claim of confidentiality is asserted in those comments or their transmittal e-mails) will be made available for public inspection and copying after the close of the comment period via the Directorate of Defense Trade Controls website at *www.pmddtc.state.gov*. Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov*, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Comments submitted via *www.regulations.gov* are immediately available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mr. C. Edward Peartree,
Director, Office of Defense Trade Controls Policy, Department of State,

telephone (202) 663-2792; email DDTCTeam@state.gov. ATTN: Regulatory Change, Corrections and Clarifications.

SUPPLEMENTARY INFORMATION: The Department makes the following revisions to the ITAR in this final rule:

- A definition of “classified” is moved from §121.1(e) to §120.46;
- The structure of §121.1(a)-(e) is realigned, with paragraphs (a) and (b) revised to clarify the existing requirements for United States Munitions List (USML) controls, and paragraphs (c), (d) and (e) removed;
- Thirteen USML categories are amended to clarify that commodities, software, and technology subject to the Export Administration Regulations (EAR) and related to defense articles in a USML category may be exported or temporarily imported on the same license with defense articles from any category, provided they are to be used in or with that defense article;
- In three places within the USML, the word “enumerated” is replaced with the word “described” to make the language consistent with changes directed in the Final Rule published at 79 FR 61226, Oct. 10, 2014;
- Section 122.4(c)(4) is revised to permit the Directorate of Defense Trade Controls (DDTC) to approve an alternative timeframe, not less than 60

days, to the current 60-day requirement for registrants to provide a signed amended agreement;

- Section 124.2(c)(5)(v) is revised to correct errors to the USML category references for gas turbine engine hot sections, from VI(f) and VIII(b) to Category XIX;
- Section 124.12 is amended in paragraph (a)(9) to update the name of the Defense Investigative Service to Defense Security Service;
- Section 126.9 on Advisory Opinions and Related Authorizations is amended to correct paragraph (a);
- Paragraph (b) of § 126.10 is amended to clarify the scope of control and disclosure of information, however, notwithstanding the changes to paragraph (b) it is the Department's policy not to publicly release information relating to activities regulated by the ITAR except as required by law or when doing so is otherwise in the interest of the United States Government; and
- Section 127.7(b) is amended to clarify the policies and procedures regarding statutory debarments (addressing inadvertent omissions resulting from a prior amendment to that section), and §127.11 is

amended to make conforming revisions to paragraph (c) omitted from prior amendment to that section.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (Rulemaking) and 554 (Adjudications) of the Administrative Procedure Act (APA). Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department is providing 30 days for the public to submit comments without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function.

Regulatory Flexibility Act

Since this rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by

the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rulemaking is not a major rule within the definition of 5 U.S.C. 804.

Executive Orders 12372 and 13132

This rulemaking will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Department has determined that this rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to

select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). These executive orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has determined that, given the nature of the amendments made in this rulemaking, there will be minimal cost to the public. Therefore, the benefits of this rulemaking outweigh the cost. This rule has not been designated a “significant regulatory action” by the Office of Information and Regulatory Affairs under Executive Order 12866.

Executive Order 12988

The Department of State reviewed this rulemaking in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects

22 CFR Parts 120 and 121

Arms and munitions, Classified information, Exports.

22 CFR Part 122

Arms and munitions, Exports.

22 CFR Part 124

Arms and munitions, Exports, Technical assistance.

22 CFR Part 126

Arms and munitions, Exports.

22 CFR Part 127

Arms and munitions, Exports, Crime, Law, Penalties, Seizures and forfeitures.

Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, parts 120, 121, 122, 124, 126, and 127 are amended as follows:

PART 120 – PURPOSE AND DEFINITIONS

1. The authority citation for part 120 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; 22 U.S.C. 2651a; Pub. L. 105-261, 112 Stat. 1920; Pub. L. 111-266; Section 1261, Pub. L. 112-239; E.O. 13637, 78 FR 16129.

2. Section 120.46 is added to read as follows:

§120.46 Classified.

Classified means classified pursuant to Executive Order 13526, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government or international organization.

PART 121 – THE UNITED STATES MUNITIONS LIST

3. The authority citation for part 121 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Section 1261, Pub. L. 112-239; E.O. 13637, 78 FR 16129.

4. Section 121.1 is amended by:

- a. Revising paragraphs (a) and (b);
- b. Removing paragraphs (c), (d), and (e);
- c. Removing the words “controlled in this category” in paragraph (x) and the Note to paragraph (x) for each of the following USML categories:

Category IV, Category V, Category VI, Category VII, Category VIII, Category IX, Category X, Category XI, Category XIII, Category XV, Category XVI, Category XIX, and Category XX;

d. In Category VI:

i. Removing the word “enumerated” and adding in its place the word “described” in Note 1 to paragraph (f); and

ii. Removing the word “enumerated” and adding in its place the word “described” in paragraph (g); and

e. Removing the word “enumerated” and adding in its place the word “described” in paragraph (h) of Category VII.

The revisions read as follows:

§ 121.1 The United States Munitions List.

(a) *U.S. Munitions List.* In this part, articles, services, and related technical data are designated as defense articles or defense services pursuant to sections 38 and 47(7) of the Arms Export Control Act and constitute the U.S. Munitions List (USML). Changes in designations are published in the Federal Register. Paragraphs (a)(1) through (3) of this section describe or explain the elements of a USML category:

(1) *Composition of U.S. Munitions List categories.* USML categories are organized by paragraphs and subparagraphs identified alphanumerically.

They usually start by enumerating or otherwise describing end-items, followed by major systems and equipment; parts, components, accessories, and attachments; and technical data and defense services directly related to the defense articles of that USML category.

(2) *Significant Military Equipment.* All items described within a USML paragraph or subparagraph that is preceded by an asterisk (*) are designated “Significant Military Equipment” (see §120.7 of this subchapter). Note that technical data directly related to the manufacture or production of a defense article designated as Significant Military Equipment (SME) is also designated as SME.

(3) *Missile Technology Control Regime (MTCR) designation.* Annotation with the parenthetical “(MT)” at the end of a USML entry, or inclusion in §121.16, indicates those defense articles that are on the MTCR Annex. See §120.29 of this subchapter.

(b) *Order of review.* Articles are controlled on the U.S. Munitions List because they are either:

(1) Enumerated in a category; or

(2) Described in a “catch-all” paragraph that incorporates “specially designed” (see §120.41 of this subchapter) as a control parameter. In order to classify an item on the USML, begin with a review of the general

characteristics of the item. This should guide you to the appropriate category, whereupon you should attempt to match the particular characteristics and functions of the article to a specific entry within that category. If the entry includes the term “specially designed,” refer to §120.41 to determine if the article qualifies for one or more of the exclusions articulated in §120.41(b). An item described in multiple entries should be categorized according to an enumerated entry rather than a specially designed catch-all paragraph. In all cases, articles not controlled on the USML may be subject to another U.S. government regulatory agency (*see* §120.5 of this subchapter, and Supplement No. 4 to part 774 of the Export Administration Regulations for guidance on classifying an item subject to the EAR).

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PART 122 – REGISTRATION OF MANUFACTURERS AND EXPORTERS

5. The authority citation for part 122 continues to read as follows:

Authority: Sections 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); 22 U.S.C. 2651a; E.O. 13637, 78 FR 16129.

6. Section 122.4 is amended by revising paragraph (c)(4) to read as follows:

§122.4 Notification of changes in information furnished by registrants.

* * * * *

(c) * * *

(4) Amendments to agreements approved by the Directorate of Defense Trade Controls to change the name of a party to those agreements. The registrant must provide to the Directorate of Defense Trade Controls a signed copy of such an amendment to each agreement signed by the new U.S. entity, the former U.S. licensor and the foreign licensee, within 60 days of this notification, unless an extension of time is approved by the Directorate of Defense Trade Controls. Any agreement not so amended may be considered invalid.

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**PART 124 – AGREEMENTS, OFF-SHORE PROCUREMENT, AND
OTHER DEFENSE SERVICES**

7. The authority citation for part 124 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2651a; 22 U.S.C. 2776; Section 1514, Pub. L. 105-261; Pub. L. 111-266; Section 1261, Pub. L. 112-239; E.O. 13637, 78 FR 16129.

8. Section 124.2 is amended by revising paragraph (c)(5)(v) to read as follows:

§124.2 Exemptions for training and military service.

* * * * *

(c) * * *

(5) * * *

(v) Gas turbine engine hot sections covered by Category XIX(f);

* * * * *

9. Section 124.12 is amended by revising paragraph (a)(9) to read as follows:

§124.12 Required information in letters of transmittal.

(a) * * *

(9) For agreements that may require the export of classified information, the Defense Security Service cognizant security offices that have responsibility for the facilities of the U.S. parties to the agreement shall be identified. The facility security clearance codes of the U.S. parties shall also be provided.

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PART 126 – GENERAL POLICIES AND PROVISIONS

10. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117; Pub. L. 111–266; Sections 7045 and 7046, Pub. L. 112–74; E.O. 13637, 78 FR 16129.

11. Section 126.9 is amended by revising paragraph (a) to read as follows:

§ 126.9 Advisory opinions and related authorizations.

(a) *Preliminary authorization determinations.* A person may request information from the Directorate of Defense Trade Controls as to whether it would likely grant a license or other approval for a particular defense article or defense service to a particular country. Such information from the Directorate of Defense Trade Controls is issued on a case-by-case basis and applies only to the particular matters presented to the Directorate of Defense Trade Controls. These opinions are not binding on the Department of State and may not be used in future matters before the Department. A request for an advisory opinion must be made in writing and must outline in detail the equipment, its usage, the security classification (if any) of the articles or related technical data, and the country or countries involved.

12. Section 126.10 is amended by revising paragraph (b) to read as follows:

§ 126.10 Disclosure of information.

* * * * *

(b) *Determinations required by law.* Section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) provides, by reference to section 12(c) of the Export Administration Act (50 U.S.C. 2411), that information obtained for the purpose of consideration of, or concerning, license applications shall be withheld from public disclosure unless the release of such information is determined by the Secretary to be in the national interest. Section 38(e) of the Arms Control Export Act further provides that, the names of countries and types and quantities of defense articles for which licenses are issued under this section shall not be withheld from public disclosure unless certain determinations are made that the release of such information would be contrary to the national interest. Such determinations required by section 38(e) shall be made by the Assistant Secretary of State for Political-Military Affairs.

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PART 127 – VIOLATIONS AND PENALTIES

13. The authority citation for part 127 continues to read as follows:

Authority: Sections 2, 38, and 42, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); 22 U.S.C. 401; 22 U.S.C. 2651a; 22 U.S.C. 2779a; 22 U.S.C. 2780; E.O. 13637, 78 FR 16129; Pub. L. 114-74, 129 Stat. 584.

14. Section 127.7 is amended by revising paragraph (b) to read as follows:

§ 127.7 Debarment.

* * * * *

(b) *Statutory debarment.* It is the policy of the Department of State not to consider applications for licenses or requests for approvals involving any person who has been convicted of violating the Arms Export Control Act or convicted of conspiracy to violate that Act for a three year period following conviction and to prohibit that person from participating directly or indirectly in any activities that are subject to this subchapter. Such individuals shall be notified in writing that they are statutorily debarred pursuant to this policy. A list of persons who have been convicted of such offenses and debarred for this reason shall be published periodically in the Federal Register. Statutory debarment in such cases is based solely upon the outcome of a criminal proceeding, conducted by a court of the United States, which established guilt beyond a reasonable doubt in accordance with due process. Reinstatement is not automatic, and in all cases the debarred person

must submit a request for reinstatement to the Department of State and be approved for reinstatement before engaging in any activities subject to this subchapter. The procedures of part 128 of this subchapter are not applicable in such cases.

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15. Section 127.11(c) is revised to read as follows:

§127.11 Past violations.

* * * * *

(c) *Debarred persons.* Persons debarred pursuant to §127.7(b) (statutory debarment) may not utilize the procedures provided by paragraph (b) of this section while the statutory debarment is in force. Such persons may utilize only the procedures provided by § 127.7(d).

Dated: November 18, 2016.

Tom Countryman,
Acting Under Secretary,
Arms Control and International Security,
Department of State.

